

REMARKS / ARGUMENTS

1. INTRODUCTION

Clarifying amendments have been made to claims 1, 7, 10, 11, 12 and 17 as shown in the above claim listing, and new independent claims 22 and 23 have been added to the application. The remaining claims remain as originally filed. Accordingly, claims 1-23 are now currently pending in the application. It is submitted that all amendments to the claims are supported by the specification and drawings as originally filed. Reexamination and reconsideration is hereby respectfully requested.

2. CLAIM OBJECTIONS

The Examiner objected to claims 7 and 12 as containing awkward phrasing, and accordingly such claims have been amended to overcome the objection.

3. CLAIM REJECTIONS – 35 U.S.C. § 102

The Examiner has rejected claims 1, 2, 4, 5, 8, 10, 17, 19, and 20 under 35 U.S.C. 102(b) as being anticipated by Sasano et al, (US 5,276,445). Applicant has amended independent claim 1, independent claim 10, and independent claim 17. Applicant respectfully submits that the rejection of claims 1, 2, 4, 5, 8, 10, 17, 19, and 20 have been overcome because Sasano et al. do not disclose or suggest each and every limitation set forth in the claims as amended. In re Paulsen, 30 F.3d 1475, 1478-79, 31 U.S.P.Q.2d 1671 (Fed. Cir. 1994); Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1997) (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described,

in a single prior art reference.”). Reconsideration and withdrawal of these rejections is requested in view of the amended claims and/or for the reasons stated below.

Turning firstly to independent claim 1, such claim has been amended to clarify that the mounting bracket is claimed in combination with a heat exchanger having a stack of tube members, and that the mounting bracket includes, among other features, (i) a flat plate having an elongated planar central portion mounted to the heat exchanger core, (ii) a first bracket member having a first bracket end integrally connected to an end of the planar central portion, a second distal end engaging the heat exchanger core at a location spaced apart from the planar central portion and an intermediate portion between the first bracket end and the second distal end that is spaced apart from the heat exchanger core, the first bracket member at least partially surrounding an opening adjacent a side edge of the heat exchanger core, and (iii) a second bracket member mounted to the first bracket member and having a central plate portion extending at least partially across the opening that is at least partially surrounded by the first bracket member, the central plate portion defining a mounting opening therethrough.

It is respectfully submitted that such a combination of features is neither shown in or even remotely suggested by the cited reference Sasano et al, and accordingly claim 1 and the claims 2-9 that depend therefrom are directed to allowable subject matter.

Independent claim 10 has been amended to clarify that the first bracket member extends from the planar central portion outward from a side of the stacked tube core and has a distal end for engaging an end of one of the elongate tubes in the stacked tube core at a location on the side of the staked tube core spaced apart from the first end of the planar central portion. Sasano et al. fails to disclose a first bracket member having such a configuration, and applicant submits that

independent claim 10 and claims 11-16 that depend therefrom are directed to allowable subject matter.

Dependent claim 11 has been amended to accommodate the amendments to claim 10 and also to correct a typographical error in that the phrase "...the distal end of the second bracket member..." should be "...the distal end of the first bracket member...".

Independent claim 17 has been amended so that it is now directed to a heat exchanger that includes a heat exchanger core to which the mounting bracket is secured. In particular, claim 17 is directed towards a heat exchanger that includes:

a heat exchanger core including a plurality of stacked elongate tubes each defining an internal fluid passage and having spaced apart inlet and outlet openings in communication with the internal fluid passage, the stacked tube core including manifolds communicating with the inlet and outlet openings for circuiting a flow of fluid through the internal fluid passages of the tubes; and

a mounting bracket secured to the heat exchanger core comprising: (i) a unitary first bracket member including a first plate portion having a first end section secured to the heat exchanger core, a second plate portion having a second end section secured to the heat exchanger core, and an intermediate plate portion spaced apart from the heat exchanger core, the first and second plate portions being spaced apart from each other with the intermediate plate portion extending there between, the first, second and intermediate plate portions defining a C- shaped space therebetween; and

a separately formed second bracket member mounted to the first bracket member and having a central portion extending at least partially across the C-shaped space, at least one of the second and first bracket members having engagement members for securing the second bracket member to the first bracket member. the central portion defining a mounting opening there through.

It is respectfully submitted that such a combination of features is neither shown in or even remotely suggested by the cited reference Sasano et al, and accordingly claim 17 and the claims 18-20 that depend therefrom are directed to allowable subject matter.

5. CLAIM REJECTIONS – 35 U.S.C. § 103

Claims 3, 18, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sasano et al. Applicant has amended claim 1, from which claim 3 depends, and has amended claim 17, from which claim 18 depends. Applicant respectfully submits that the rejection is improper because the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 3, 18, and 21. Reconsideration and withdrawal of these rejections is requested in view of the amended claims and/or for the reasons stated below.

“Patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court is applied in each and every case.” MPEP § 2141 (emphasis in original). “The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” MPEP § 2142.

To establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

MPEP § 2143.

Applicant submits that the Examiner has failed to establish a *prima facie* case of obviousness with respect to Claims 3 and 18, because, as discussed in Section 4, above, the Examiner has failed to show that Sasano et al. teaches or suggests all of the claimed limitations of the independent claims from which they depend, as amended.

With respect to independent method claim 21, it is respectfully submitted that the rejection of such claim under 35 U.S.C. 103(a) as being unpatentable over Sasano et al. is improper and should be withdrawn. The Examiner has indicated that Sasano et al. discloses that bracket 400 and side plate 300 are brazed due to the presence of braze clad on the inner and outer surfaces of bracket 400, and that it is common in the art for automated brazing processes to rely on a clad layer to provide the fusible bonding metal, and often only one of the components being joined is clad with the braze layer to avoid excessive braze material present at the joint. It should be noted however, that the Examiner has throughout the office action when characterizing how the components of Sasano et al. correspond to the components of the subject claims indicated that the bracket 400 of Sasano et al corresponds to the second bracket member of the claims (with the opening 417 in bracket 400 of Sasano et al corresponding to the mounting opening in the second bracket member of the claims) and the side plate 300 of Sasano et al corresponding to the first bracket member of the claims. Thus, Sasano et al specifically teaches that “second” bracket 400 is braze clad, whereas the method of claim 21 specifically requires that the second bracket member not be braze clad. Sasano et al teaches that the “second” bracket 400 be braze clad to braze pin member 414 within opening 417 (see Sasano et al column 4, lines 29-37). In the process of claim 21, the absence of braze cladding on the second bracket material is desirable so that “brazing material will generally not flow into the mounting opening 92 during brazing of the heat exchanger, and thus the mounting opening 92 is less likely to be distorted or altered during the manufacturing process, thereby improving manufacturing tolerances” (See Specification of present application, final sentence of para [0035]).

Accordingly, there is no motivation in Sasano et al to modify the braze clad "second " bracket of Sasano et al to arrive at the non-braze clad second bracket of claim 21, and Sasano et al specifically teaches away from such a solution by teaching the use of brazing to secure pin member 414 within opening 47, whereas a desirable feature of the presently claimed method is the avoidance of braze material in the vicinity of the mounting opening of the second bracket member. As such, it is submitted that independent claim 21 is directed to patentable subject matter.

It is also respectfully submitted that original dependent claims 3 and 18 that were also rejected by the Examiner as being obvious are also directed to patentable subject matter for the same reasons as independent claim 21.

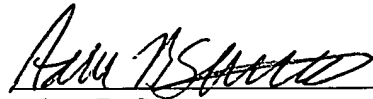
6. ALLOWABLE SUBJECT MATTER

Applicant thanks the Examiner for indicating that that claims 6, 7, 9 and 11-16 are directed to allowable subject matter. In this regard, original claims 6 and 16, which the Examiner has indicated would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, have accordingly been rewritten as new independent claims 22 and 23, respectively.

7. **CONCLUSION**

For at least the above-cited reasons, all claims pending in the present application are now believed to be allowable. Early receipt of a Notice of Allowance is hereby respectfully requested.

Respectfully submitted,



Adam B. Strauss
Reg. No. 43,167
DYKEMA GOSSETT PLLC
39577 Woodward Ave, Suite 300
Bloomfield Hills, MI 48304
(248) 203-0764
ipmail@dykema.com
Customer No. 26127
Attorney for Applicant(s)

Date: November 18, 2005

BH01\569664.1
ID\ABST